stockholder to make up the difference between what he paid for his stock and its par value. Under such a statute New Jersey has recently enforced liability in favor of a subsequent creditor with notice, notwithstanding that the stockholder had been released by the corporation from such liability and that the creditor had, as stockholder himself, assented to such release. *Easton Nat'l Bank* v. *American Brick and Tile Co.*, 64 Atl. Rep. 917 (Ct. Err. and App.). A very similar statute in Iowa, under similar circumstances, has received a contrary construction.[14] The interpretation of the New Jersey court, however, seems best to accord with the policy against watered stock at which these statutes are aimed.

THE EFFECT OF FRAUD AND THE STATUTE OF FRAUDS ON PAROL DECLARATIONS OF TRUST. — We may first consider several situations where B, the person attempted to be made a trustee, is not fraudulent. First, when A conveys land absolutely to B, who orally agrees to hold it in trust for A, it is clear that the statute renders the express trust unenforcible. But since B is under a duty in conscience which he refuses to perform, equity should compel him to return the consideration he received therefor, — *i. e.*, enforce specific restitution. The constructive trust thus raised for A would be by operation of law, and so within the exception of the statute. Such is the law in England.[1] But the American courts, insisting rather blindly that such a trust is in the teeth of the statute, refuse to raise it.[2] They prevent total injustice, however, by permitting A to recover the value of the land.[3] Secondly, when A conveys land absolutely to B, who orally agrees to hold it in trust for C, the American courts, again differing from the English, allow B to keep the land, insisting with still less justification that they would otherwise be nullifying the statute.[4] B, conscionably, has no right to the land, and so a constructive trust should be raised for A, as in cases where an intended trust fails for other reasons.[5] Thirdly, when A devises land absolutely to B, or agrees to remain intestate when B is his heir-at-law, with the parol understanding that B is to hold for C, it is the settled law, anomalous for England and doubly anomalous for America, that C may enforce the trust.[6] Logically, the English doctrine in the preceding situations should be applied here also, with the result of raising a constructive trust for A's heirs, as when testamentary trusts fail for other reasons.[7] The decision of the courts may be viewed as a specific enforcement of the agreement, with the statutory objection overcome by the strong equitable consideration that, as the testator is dead, in no other way could his wish to do something for C ever be carried out.[8] Fourthly, if A execute to B, his heir apparent, what they both believe to be a valid conveyance, with the parol agreement that

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[14] Callanan *v.* Windsor, 78 Ia. 193; State Trust Co. *v.* Turner, 111 Ia. 664.

[1] Booth *v.* Turle, L. R. 16 Eq. 182.

[2] Hubbard *v.* Sharp, 11 N. Y. St. Rep. 802.

[3] Cromwell *v.* Norton, 79 N. E. Rep. 433 (Mass.).

[4] Peterson *v.* Boswell, 137 Ind. 211. *Contra*, McKinney *v.* Burns, 31 Ga. 295. See 3 Pomeroy, Eq. Jurisp., § 1056 (3).

[5] St. Paul's Church *v.* Attorney-General, 164 Mass. 188.

[6] Russell *v.* Jackson, 10 Hare 204; Will of O'Hara, 95 N. Y. 403, 413. *Contra*, Moore *v.* Campbell, 102 Ala. 445; Bedilian *v.* Seaton, 3 Wall. Jr. (U. S. C. C.) 279, 285.

[7] Will of O'Hara, *supra*.

[8] See Bedilian *v.* Seaton, *supra*, 286.

B is to hold in trust for C, and it is found after A's death that the conveyance was void, it would seem that B, as heir, should be held to have the land free from any trust, since he does not get the land directly by reason of the agreement.

When, however, B is fraudulent, the question is entirely changed. Then the American courts find no difficulty in raising a constructive trust for A in the first situation,[9] and for C in the second.[10] That this result should be attained is generally conceded, but the reasons usually advanced therefor are not especially satisfactory. The courts commonly say that they will not allow the statute to be made an instrument of injustice. But that is loose, and, as is shown above, hardly veracious. A text-writer suggests that equity thereby punishes the wrongdoer and takes away his ill-gotten gains.[11] But it is not one of equity's rôles to play assistant to criminal law. It is believed that the true explanation is that equity thereby gives specific reparation of B's tort. To accomplish this, it must give the intended *cestui* the beneficial interest he was to have, and thus is raised what is truly a trust by operation of law. Applying this to the third situation, we see that the position of the courts in making B, when fraudulent, a constructive trustee for C is entirely logical, except that courts sometimes go rather far to find this fraud. A similar result is reached in the fourth situation when B is fraudulent. Except for B's fraud, A would have made some other disposition of the land for the benefit of C, and in order specifically to repair the harm resulting from his wrong, B, though taking as heir, should be made a constructive trustee for C. It was so held in a recent case. *Crossman* v. *Keister*, 79 N. E. Rep. 58 (Ill.). This combination of facts is apparently novel, but the decision is a correct application of logical principles.

STATUTORY INDICTMENT IN A COUNTY OTHER THAN THAT WHERE THE CRIME WAS COMMITTED. — How far does the federal Constitution restrain a state from modifying its criminal procedure? A recent case raises the question whether a state may provide that indictments for lynching shall be found by the grand jury of a county adjoining the one where the crime was committed, and holds such a statute constitutional. *State* v. *Lewis*, 55 S. E. Rep. 600 (N. C.). The section of the Constitution which confers and defines the judicial power of the United States, and incidentally provides that the trial of all crimes except impeachment shall be by jury,[1] obviously applies only to the federal government. The same is true of the first ten amendments, including the Fifth and Sixth, which provide specifically for an indictment by a grand jury and trial by a petit jury.[2] These restrictions have not been extended to the states by the Fourteenth Amendment.[3] The question, then, is whether any particular modification is a denial of "due process of law" under that amendment.

The words "due process of law," as used in both the Fifth and Fourteenth Amendments, have been held equivalent to "law of the land" in

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[9] Brison *v.* Brison, 75 Cal. 525.
[10] Goldsmith *v.* Goldsmith, 145 N. Y. 313.
[11] 3 Pomeroy, Eq. Jurisp., § 1056 (3).

[1] Art. III. § 2.
[2] Barron *v.* Mayor, etc., of Baltimore, 7 Pet. (U. S.) 243; Brown *v.* New Jersey, 175 U. S. 172.
[3] Slaughter House Cases, 16 Wall. (U. S.) 36.